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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Master File No. 07-5944 SC

MDL No. 1917

This Document Relates to:

All Indirect Purchaser Actions;

Best Buy Co., et al. v. Hitachi, Ltd., et al., No. 11-cv-05513;

Best Buy Co., et al. v. Technicolor SA, et al., No. 13-cv-05264;

Sears, Roebuck and Co. and Kmart Corp. v. Technicolor SA, No. 13-cv-05262;

Sears, Roebuck and Co. and Kmart Corp. v. Chunghwa Picture tubes, Ltd., No. 11-cv-05514;

Sharp Electronics Corp. v. Hitachi, Ltd., No. 13-cv-01173;

Sharp Electronics Corp. v. Koninklijke Philips Electronics, N.V., et al., No. 13-cv-02776;

Siegel v. Hitachi, Ltd., et al., No. 11-cv-05502;

Siegel v. Technicolor SA, et al., No. 13-cv-05261;

DIRECT ACTION PLAINTIFFS'
RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION IN LIMINE
NO. 12 [D.E. 3568]

Judge: The Honorable Samuel Conti
Court: Courtroom No. 1, 17th Floor
Date: None Set

1 *Target Corp. v. Chunghwa Picture Tubes,*
2 *Ltd., et al.,* No. 13-cv-05514;

3 *Target Corp. v. Technicolor SA, et al.,* No.
4 13-cv-05686;

5 *Viewsonic Corp. v. Chunghwa Picture Tubes,*
6 *Ltd.,* No. 14-cv-02510.

7
8 In this case alleging the illegal price-fixing of CRTs, the jury should be presented with
9 evidence of how defendants set the prices for the various CRTs they manufactured. But
10 Defendants seek to exclude evidence and argument relevant to that issue, and on a matter of
11 common sense: manufacturers will price different sizes of the same product in relationship to
12 each other. Citing no authority that is in any way relevant to that simple proposition, defendants
13 seek to deprive the jury of their own witnesses' testimony and contemporaneous documents that
14 speak to this simple truth. Because the jury is entitled to consider this evidence, as well as expert
15 testimony and argument regarding this evidence, defendants' motion must be denied.
16

17 **I. The Evidence Demonstrates that Price Agreements on One Size CRT Had Effects on**
18 **the Pricing of Other Size CRTs**

19 As defendants point out in their motion, their own witnesses have testified that in agreeing
20 to supra-competitive pricing on one model of CRT, the conspirators necessarily had to set their
21 prices on other sizes accordingly. [REDACTED] made this explicitly clear in his
22 testimony:
23

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] attached to Declaration of
5 Jonathan J. Ross ("Ross Dec.") as Ex. A).

6 Defendants' contemporaneous documents also demonstrate this correlation between the
7 pricing of different size tubes. *See, e.g.*, Exs. 1229 & 1142 [REDACTED]

8 [REDACTED] attached to Ross Dec. as Exs. B & C. [REDACTED]

9 [REDACTED] comports with the common sense notion that
10 prices for different size products move in tandem, in either direction. *See, e.g.*, Ex. 2019 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 [REDACTED] attached to Ross Dec. as Ex. D. The evidence shows that the cartel's
15 goals were generalized: to use price collaboration to prevent prices from dropping for the full
16 range of CRTs, including large sized CRTs. *See, e.g.*, SDCRT-0002520 [REDACTED]
17 [REDACTED]

18 [REDACTED] attached to Ross
19 Dec. as Ex. E.

20 The cartel's reliance on price differentials for sizes is similar to its reliance on geographic
21 price differentials, which is also demonstrated by contemporaneous documents and defense
22 witness testimony. *See, e.g.*, Ex. 710, attached to Ross Dec. as Ex. F; Deposition Testimony of
23 [REDACTED]

24 [REDACTED] attached to Ross Dec. as Ex. A. Plaintiffs will
25 also present evidence that the cartel believed that [REDACTED]
26 [REDACTED]

27 [REDACTED] *See* CHU00029171 [REDACTED]
28 [REDACTED]

attached to Ross Dec. as Ex.

1 G. Defendants may, of course, attempt to counter this evidence, if they believe that evidence to
 2 the contrary exists in the record. What they may not do, of course, is prevent the jury from
 3 considering this evidence in the first place.
 4

5 **II. Defendants Present No Case Law Holding or Even Implying that Evidence of Price**
 6 **Correlation Is Inadmissible**

7 Defendants' motion lacks citation to even one case that supports their contention. Instead,
 8 defendants rely (in what they call a "related context") on cases which discuss the antitrust concept
 9 known as the "umbrella theory" of damages. Defendants' reliance is misplaced: these cases take
 10 issue with the contention that plaintiffs can recover damages for products sold by companies
 11 other than defendants on the theory that the defendants' price fixing raised prices throughout the
 12 industry. See, e.g., *In re Coordinated Proceedings in Petroleum Prods. Antitrust Litig.*, 691 F.2d
 13 1335 (9th Cir. 1982) (finding umbrella theory of damages inapplicable); *Mid-West Paper Prods.*
 14 *Co. v. Cont'l Grp., Inc.*, 596 F.2d 573 (3d Cir. 1979) (direct purchasers from competitors not
 15 entitled to sue on a theory that defendants' anticompetitive behavior made it possible for their
 16 competitors to charge higher prices); *Or. Laborers-Emp'rs Health & Welfare Trust Fund v. Philip*
 17 *Morris Inc.*, 185 F.3d 957 (9th Cir. 1999) (finding no direct link between tobacco companies'
 18 selling cigarettes and health plans paying for medical treatment of smokers). One of the cases
 19 cited actually upholds the plaintiff's causation theory. See *Theme Promotions, Inc. v. News Am.*
 20 *Mktg. FSI*, 546 F.3d 991 (9th Cir. 2008) (finding plaintiff's claimed antitrust injury to be a direct
 21 result of defendant's antitrust violation).
 22

23 As the Ninth Circuit has explained, "the umbrella theory is essentially a consequential
 24 damages theory" which "seeks to hold price-fixers liable for harm allegedly flowing from the
 25 illegal conduct even though the price-fixing defendants received none of the illegal gains and
 26 were uninvolved in their competitors' pricing decisions." *In re Coordinated Proceedings in*
 27
 28

1 *Petroleum Prods.*, 691 F.2d at 1339. Here, by contrast, Plaintiffs are not seeking damages for
2 products sold by companies unaffiliated with defendants on an umbrella damages theory. Rather,
3 the DAPs seek damages for overcharges they paid on price-fixed CRTs or CRT Finished Products
4 sold to them by defendants and their affiliated companies. The umbrella damages theory is
5 simply irrelevant to the question of whether plaintiffs may present evidence of defendants' own
6 pricing practices for CRTs purchased from defendants and their affiliates.
7

8 Defendants also cite to a few cases for the proposition that the plaintiffs have to show
9 actual agreements to fix prices on the products at issue. However, none of those cases address
10 (much less preclude) the type of evidence that defendants seek to exclude from the jury's
11 consideration here: evidence that the cartel conducted its pricing using differentials and other
12 means to ensure that all products were covered. *See, e.g., United States v. Socony-Vacuum Oil*
13 *Co.*, 310 U.S. 150, 223-34 (1940) (holding that "the machinery employed by a combination for
14 price-fixing is immaterial" such that any "combination formed for the purpose and with the effect
15 of raising, depressing, fixing, pegging or stabilizing" price is "illegal *per se*"; *Palmer v. BRG of*
16 *Ga. Inc.*, 498 U.S. 46, 48 (1990) (reaffirming *Socony-Vacuum* and emphasizing that antitrust
17 conspiracy liability can be established "even though there was no direct agreement on . . . actual
18 prices.") *Id.*
19
20

21 Defendants simply have no legal authority supporting their radical view that would usurp
22 the jurors' role in considering the evidence and making their own determinations of what that
23 evidence proves.

24 **III. Conclusion**

25 Defendants' motion in limine no. 12 should be denied.
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1 Dated: February 27, 2015.
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